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maintenance of a fire department is a public or governmental function, see *Wheeler* v. *City of Cincinnati*, 19 Ohio St. 19; *Hayes* v. *City of Oshkosh*, 33 Wis. 314; *Jewett* v. *City of New Haven*, 38 Conn. 368. However, none of the above cases involves precisely this state of facts, and in the vigorous dissenting opinion of RUDKIN, J.,—FULLERTON, J., concurring,—it is said that the real point in issue is this: "Can a municipality owning horses and having exclusive dominion over them, permit them to trespass upon the private property of others with impunity?" Municipalities, considered as artificial persons owning and managing property, are "chargeable with all the duties and obligations of other owners of property, and must respond for creating or suffering nuisances under the same rules as govern the responsibility of natural persons." COOLEY, TORTS (2nd Ed.) p. 738; DILLON, MUNICIPAL CORPORATIONS (4th Ed.) § 95; *Cumberland and Oxford Canal Corporation* v. *City of Portland*, 62 Me. 504. In *Rowland* v. *Kalamazoo Supt's of Poor*, 49 Mich. 553, the court cited COOLEY ON TORTS, supra, and *Ashley* v. *Port Huron*, 35 Mich. 296, and said: "An examination of the above authorities will show that municipal corporations, in the care and management of their property, like an individual, are in duty bound to produce no injury to others." In *Moulton* v. *Scharborough*, 71 Me. 267, a town was held liable for injuries caused by a vicious ram owned by it. Some courts, however, make a distinction between the liability of municipal corporations for injuries resulting from property held for governmental purposes and property held for gain and profit, holding that a recovery may be had in the latter case but not in the former. *Worden* v. *New Bedford*, 131 Mass. 23. But *Jones on Negligence of Municipal Corporations*, § 150, says, the weight of authority does not justify this distinction. See also BISHOP, NON-CONTRACT LAW, § 755 et seq.; *Aldrich* v. *Tripp*, 11 R. I. 141; *Barnes* v. *District of Columbia*, 91 U. S. 540.

NEGLIGENCE—PARENT'S NEGLIGENCE NOT IMPUTED TO CHILD.—Plaintiff, an infant, four years and one month old, while on the street unattended, was injured by defendant's car. *Held*, that the negligence of the child's parents, in permitting it to be on the street unattended, was not imputable to the child, so as to defeat a recovery in an action by the child. *Jacksonville Electric Co.* v. *Adams* (1905), — Fla. —, 39 So. Rep. 183.

This is a case of first impression in Florida. For a discussion of the principles involved and citation of authority see 4 MICHIGAN LAW REVIEW 79.

SALES — WAGERING CONTRACTS — DEALINGS IN FUTURES — QUESTION OF INTENTION.—Plaintiff was a cotton-broker who was in the habit of furnishing cotton to defendant, a manufacturer of cotton goods. In an action to recover for losses occasioned by defendant's failure to furnish sufficient margin in a particular series of transactions, plaintiff relied upon an express agreement that actual delivery was contemplated and upon his tender of delivery, in opposing defendant's contention that the agreement was a wagering contract and unenforceable. The invoices rendered in the transactions in hand were less explicit than those rendered in former actual sales in that they failed to specify either the weight or number of the cotton-bales. *Held*, that

the agreement between the parties contemplated merely a settlement of the difference between the contract and the market price and was illegal. *Jennings* v. *Morris* (1905), — Pa. —, 61 Atl. Rep. 115.

This case is of interest as illustrating the extent to which the courts will sometimes go in inquiring into the real intention of the parties to an alleged wagering contract. In general, except as otherwise provided by express enactment, a dealing in futures is not illegal; *Barnett* v. *Baxter,* 64 Ill. App. 544; *Mohr* v. *Meson,* 47 *Minn.* 228, 49 N. W. 862; *Morrissey* v. *Broomal* 37 Neb. 766, 56 N. W. 383; and the weight of authority seems to be that a purchase on margins is not necessarily unenforceable; *Hatch* v. *Douglas,* 48 Conn. 116, 40 Am. Rep. 154; *Wall* v. *Schneider,* 59 Wis. 352, 18 N. W. 443; *In re Taylor,* 192 Pa. 304, 43 Atl. 973.; *Tantum* v. *Arnold,* 42 N. J. Eq. 60, 6 Atl. 316. But such contracts must intend actual delivery and not simply a settlement of differences; *Pearce* v. *Rice,* 142 U. S. 28, 35 L. Ed. 925; *Billingslea* v. *Smith,* 77 Md. 504, 26 Atl. 1077. Though if one party; only, intended actual delivery, the contract has been held valid; *Bibb* v. *Allen,* 149 U. S. 481, 37 L. Ed. 819; *Clews* v. *Jamieson,* 182 U. S. 461, 45 L. Ed 1183. In any given instance the question as to what the intention really was, is for the jury. *Gregory* v. *Wendell,* 39 Mich. 337; *Kirkpatrick* v. *Adams,* 20 Fed. 287; *Watts* v. *Costello,* 40 Ill. App. 307.

SURETYSHIP—RES JUDICATA—SURETY ESTOPPED BY JUDGMENT AGAINST PRINCIPAL.—The maker of a note had sued the holder for possession of it, alleging payment. The holder denied payment, and judgment was rendered in his favor. In this action by the holder against the maker and the surety, the latter pleads payment, and admits that the payment he pleads is the one on which judgment was passed in the first suit. The holder demurs, asserting that the judgment is conclusive upon the surety that there was no payment. *Held,* that the demurrer should be sustained. *Beh* v. *Bay et al.* (1905), — Ia. —, 103 N. W. Rep. 119.

Privity, such as works an estoppel under the doctrine res judicata, does not exist between principal and surety. *Giltinan* v. *Strong,* 64 Pa. St. 242. The great body of English and American authority holds that a judgment against the principal is not conclusive on a surety but only prima facie evidence against him. *Grafton* v. *Hinkley et al.,* 111 Wis. 46; BIGELOW ON ESTOPPEL (5th Ed.) p. 150, n. 2; BRANDT, SURETYSHIP (2nd Ed.) §630. The only widely recognized exceptions to this rule are cases of extraordinary suretyship, as of official bonds, or cases where the surety was a party to the proceedings. BLACK, JUDGMENTS, §§ 586-589. The Iowa decisions on the point are inconsistent. In *Charles* v. *Haskins et al.,* 14 Ia. 471, a judgment against a sheriff was held to be only prima facie evidence against the surety on the official bond; the better opinions hold such a judgment conclusive on the assurer. *McMicken* v. *Commonwealth,* 58 Pa. St. 213; *Dennie* v. *Smith,* 129 Mass. 143. The reason for this stricter liability seems to be that in official bonds, as in those of sheriffs or administrators, the sureties impliedly bind themselves by the result of any judicial proceedings taken against their principals. Then in ordinary suretyship, the Iowa court went to this extreme in *McConnell* v. *Poor,* 113 Ia. 133, that a judgment against the principal